

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11	IVAN SAMANIEGO,) Case No.: 1:21-cv-0839 JLT CDB
12	Plaintiff,) ORDER GRANTING DEFENDANTS' MOTION
13	v.) TO DISMISS
14	CALIFORNIA DEPARTMENT OF) (Doc. 33)
15	CORRECTIONS AND REHABILITATION, et al.,) ORDER DIRECTING THE CLERK OF COURT TO
16	Defendants.) UPDATE THE DOCKET AND TERMINATE)) SULLIVAN AND PFEIFFER AS DEFENDANTS)) IN THIS ACTION
17)

Ivan Samaniego asserts his civil rights were violated while he was incarcerated at the California Correctional Institution- Tehachapi. Samaniego contends he witnessed the assault of an inmate by CCI correctional officers and suffered retaliation for coming forward as a witness. He asserts the retaliatory acts continued after he was transferred to Kern Valley State Prison. Samaniego seeks to hold correctional officers liable for violating his rights under the First Amendment and Eighth Amendment. In addition, Samaniego seeks to hold W.J. Sullivan and Christian Pfeiffer, policymakers for CCI-Tehachapi and KVSP, liable for the First Amendment violations. (*See generally* Doc. 23.)

Defendants seek dismissal of claims in the Third Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, asserting Samaniego fails to allege facts sufficient to support his claims against Warden Sullivan, Warden Pfeiffer, and Officer Beardsley. (Doc. 32.) Samaniego opposes the motion, alleging the facts alleged are sufficient. (Doc. 36.) The Court found the matter

1 suitable for decision without oral argument, and the motion was taken under submission pursuant to
2 Local Rule 230(g). (*See* Doc. 38.) For the reasons set forth below, Defendants' motion to dismiss is
3 **GRANTED.**

4 **I. Background and Plaintiff's Allegations¹**

5 Samaniego alleges that he "witnessed the unprovoked beating by several CCI Correctional
6 Officers of fellow CCI inmate, Joe Nino, outside of Samaniego's cell" on December 31, 2018. (Doc.
7 32 at 8, ¶ 33.) According to Samaniego, "once [he] came forward as a witness to this particular assault
8 against Nino, certain CCI Correctional Officers aggressively initiated a pattern of harassment, abuse
9 and retaliation against Samaniego." (*Id.*) He alleges Officers Harris, Mumby, Perez, Luque, Gray,
10 Zavaleta, Weiss, B. Jones, Cervantes, Castillo, Davis, Sgt. Escarcega, Presson, and Lt. Tyree "all knew
11 that Samaniego was a witness to Harris' beating of inmate Nino and that he reported Harris' assault in
12 an administrative 602 claim." (*Id.*)

13 Samaniego asserts he "was attacked and brutally beaten" by CCI Correctional Officers in
14 several separate incidents on May 24, 2019. (Doc. 32 at 8, ¶ 34.) He alleges the first incident occurred
15 at approximately 18:54 hours, at which time Officers Mumby, Perez, and Luque went to Samaniego's
16 cell and were "talking trash about how they planned to fuck him up in his cell because of his reporting
17 the assault by Harris." (*Id.* at 9, ¶ 35 [internal quotation marks, modifications omitted].) He contends
18 the three officers opened the cell food port and pepper sprayed Samaniego through the port. (*Id.*)
19 Samaniego asserts he used his foot to keep the cell door closed, and officers "eventually pried the cell
20 door open after smashing Samaniego's left foot with this weapon and began spraying [him] once
21 again." (*Id.* at 9-10, ¶ 35.) Samaniego alleges that while he was "pinned down by the officers' shields,
22 Mumby, Perez, and Luque punched, kicked, and hit him with a baton. (*Id.* at 10, ¶ 35.) Samaniego
23 asserts "these defendants were physically on top of [him]" when he was placed in handcuffs, and they
24 "continued to beat him for approximately one minute before dragging him to the front of his cell and
25 placing [him] in leg shackles." (*Id.*) Samaniego asserts "Mumby, Perez, Castillo, and Luque picked
26 him up and body-slammed him to the floor." (*Id.*)

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¹ The parties' names are emphasized in capital letters throughout the Third Amended Complaint. The Court omits this emphasis in summarizing and quoting the allegations.

1 Samaniego asserts a second incident occurred at approximately 19:30 hours when he was
 2 escorted to the Day Room by Officers Gray, Zavaleta and Weiss. (Doc. 32 at 10, ¶ 36.) He alleges the
 3 three officers dragged him “down the stairs holding him by the hand restraints (cuffs) and leg
 4 shackles.” (*Id.*) Samaniego contends Gray, Zavaleta and Weiss berated and cursed him for reporting
 5 Harris and the beating of Nino. (*Id.*) Samaniego asserts “[t]hese defendants yelled... they were going
 6 to ‘fuck him up so all the other inmates can hear and fear them.’” (*Id.*) He asserts that upon arrival at
 7 the Day Room, “Gray and Zavaleta body-slapped Samaniego on the floor, on his face and stomach,
 8 then picked [him] up and dragged him to the rotunda, out of view of any other inmates and punched
 9 and kicked Samaniego for about another minute before they dragged him to R & R (Receive and
 10 Release area).” (*Id.* at 10-11, ¶ 36.)

11 According to Samaniego, a third incident occurred at approximately 19:40 hours at the R &R
 12 holding cell area, when he was “again dropped on his face and stomach by Gray, Zavaleta, Mumby, and
 13 Weiss.” (Doc. 32 at 11, ¶ 37.) Samaniego alleges these defendants attacked him “by punching him in
 14 the face, testicles, stomach and kicking him in the torso, rib area and back, while simultaneously
 15 screaming at him: ‘You fucked up, motherfucker, this is Tehachapi! You ain’t going to make it out of
 16 here!’” (*Id.*) He contends one of these four officers cut off his clothes after about a minute, “leaving
 17 him in only his underwear.” (*Id.*) Samaniego believes the officers “were extremely irritated and angry
 18 that [he] had put on additional layers of clothing under his jumpsuit in anticipation of these defendants’
 19 threats to do bodily harm and being beaten by the Correctional Officers.” (*Id.*) Samaniego asserts:

20 Weiss mounted Samaniego’s back and said to him: “You like that
 21 motherfucker? You like men on top of you?” These defendants laughed,
 22 then one of them said: “Hold his ass good!” while one of these defendants
 23 thrust his knee on the left side of Samaniego’s face, when he heard: “Did
 24 you mix it?” One of these defendants replied “Yes, I already mixed it.”
 25 Weiss then got off Samaniego’s back and he and the other defendants
 26 present held Samaniego’s legs, body and arms and back while one of the
 27 defendants said “Pour some on the back of his head” before Samaniego
 28 began to feel a liquid substance trickle down the back of his neck onto his
 back. One of the defendants then said “Hold him stronger” and right when
 Samaniego felt a firmer grip on his body, the defendants began to undo
 and remove his boxer underwear and Samaniego felt a liquid substance on
 the middle of his buttocks and anal area. These particular defendants
 began to laugh as Samaniego’s rectum was penetrated with an object,
 presumably a baton, with the liquid substance on it. This penetration of
 Samaniego’s rectum with the object occurred four to six times....

1 (*Id.* at 12, ¶ 38.) Samaniego asserts that defendant “Presson, a CDCR Registered Nurse, witnessed the
2 events,” and failed to intercede to stop the actions and “failed to render any medical assistance or
3 treatment to Samaniego at the scene or afterwards.” (*Id.* at 13, ¶ 38.)

4 Samaniego contends a fourth incident occurred around 20:30 hours, at which time CDCR
5 personnel that were present and witnessed his condition included: B. Jones, Cervantes, Sgt. Escarcega,
6 Mumby, Weiss, Zavaleta, Gray, Harris, Davis, and Lt. Tyree. (Doc. 32 at 13-14, ¶ 39.) Samaniego
7 asserts that while in Holding Cell #B, he “banged his head twice as a cry for help to get attention from
8 the medical staff,” but Presson still refused to attend to Samaniego, and the other defendants present
9 became increasingly upset because the excessive injuries … were more extensive than expected.” (*Id.*)
10 He alleges Jones screamed at the others present, “then opened the food port and emptied his full OC
11 spray on Samaniego out of frustration and to retaliate against him.” (*Id.* at 14, ¶ 39.) Samaniego
12 asserts after Jones sprayed him, “Cervantes emptied his full OC spray at Samaniego.” (*Id.*) He
13 maintains that while sprayed, he was “still in full body restraints” and “not a threat.” (*Id.*) Samaniego
14 alleges Weiss, Gray, Mumby, Zavaleta, and Harris entered the cell and “all attacked Samaniego, batoning
15 him with their shields, punching, kicking and hitting him with at least one baton, all while he was still
16 fully restrained in arm and leg shackles.” (*Id.*) Samaniego alleges he was “dragged … out of the
17 holding tank,” slammed to the floor, and “then dragged / carried to another nearby holding cell out of
18 the view of others, including inmates, and surveillance cameras.” (*Id.*)

19 Samaniego alleges the fifth incident occurred at approximately 20:55 hours on May 24, 2019.
20 (Doc. 32 at 14, ¶ 40.) He alleges that in the new holding cell area, Gray, Zavaleta, Harris, and Mumby
21 “continued to savagely beat and attack” him. (*Id.*) Samaniego asserts he was dropped on his stomach
22 and face, and sprayed “over his body and face as Samaniego screamed for his life, that the named
23 defendants were trying to kill him.” (*Id.*) He contends at least one of the defendants “continued to
24 spray and beat him with batons for approximately 60 seconds,” before he was “dragged… out of the
25 small tank area.” (*Id.*) Samaniego alleges he was taken “in an area outside in the yard cages where
26 they stopped attacking him and began to video-record Samaniego.” (*Id.* at 14-15, ¶ 40.)

27 According to Samaniego, both during and after the identified incidents, “Presson refused to
28 render any medical treatment to Samaniego for all of his bodily injuries and OC-pepper spray

1 decontamination, as required.” (Doc. 32 at 15, ¶ 41.) He alleges Presson “failed in his duties to not
 2 only remedy medical aid but also to prevent the constant, repetitive assault, torture and rape of
 3 Samaniego, which he was witness to.” (*Id.*) Similarly, Samaniego contends Tyree witnessed “all of the
 4 above-described assaults and torture,” and “Tyree failed to intercede or otherwise take any corrective
 5 action to prevent … [the] attacks.” (*Id.*, ¶ 42.) Samaniego asserts Presson and Tyree each “chose to
 6 join the conspiracy and cover up the wrongdoing of the named Correctional Officers, including
 7 preparation and submission of false reports.” (*Id.*, ¶¶ 41, 42.)

8 Samaniego seeks to hold the correctional officers and nurse Presson liable for violations of his
 9 civil rights arising under the First and Eighth Amendments. (*See generally* Doc. 32 at 16- 28.) He
 10 asserts the attacks “resulted in a concussion, permanent eye socket damage and severe injuries and
 11 lacerations to [his] arms, legs, knees, face, organs, torso, neck and hands.” (*Id.* at 17, ¶ 45.) Samaniego
 12 contends he also suffered “extreme emotional distress, fear, trauma, and humiliation.” (*Id.*)

13 In addition, Samaniego seeks to hold the warden of CCI Tehachapi, defendant Sullivan, liable
 14 for the constitutional violations. (Doc. 32 at 18-19, ¶¶ 47-48; *id.* at 24, ¶ 60.) He contends, “Sullivan
 15 was responsible for the supervision, training and hiring of persons and employees working within CCI
 16 Tehachapi, including Correctional Officers, medical staff, mental health staff and other employees
 17 within the CCI facility.” (*Id.* at 18, ¶ 47.) According to Samaniego, the claims against Sullivan “are
 18 based on his knowledge of the CDCR guidelines; and maintaining and permitting the practices,
 19 policies and customs under those guidelines and CDCR procedures for correctional facilities.” (*Id.*)
 20 He alleges that “Sullivan was aware of the December 31, 2018 incident that Samaniego witnessed and
 21 provided a statement regarding the beating of CCI inmate Joe Nino, who filed a timely 602 claim.”
 22 (*Id.*, ¶ 48.) Specifically, Samaniego asserts:

23 Sullivan knew of this beating and of Samaniego’s involvement as witness
 24 because part of Sullivan’s job duties as CCI Warden is to review such claim
 25 forms for possible disciplinary actions that may be brought against CCI
 26 personnel. In particular, Sullivan knew about Harris’ involvement in the
 27 Nino beating, that Harris was “written up” (via 602 claim) by Samaniego for
 28 this assault on Nino, and that Harris had numerous similar complaints filed
 against him for beatings and excessive force against other CCI inmates
 (including Andrew Hebert, CDCR #BC8228). Sullivan knew that
 Samaniego’s involvement as a witness to the systemic excessive force and
 retaliation undertaken by CCI’s rogue Correctional Officers, including,
 specifically, Harris, in the Nino attack, would undoubtedly “put a target” on
 Samaniego’s back. Sullivan was directly aware of rogue, corrupt

1 Correctional Officers at CCI that inflicted emotional trauma and
2 sometime[s] severe physical beatings against CCI inmates in hopes of
3 “silencing” them as witnesses to reveal or expose the criminal activities of
4 the very guards who are sworn to uphold the law and maintain order and
5 protect them in the prison system. This is precisely what happened here. By
6 coming forward to expose the rogue guards, i.e., Harris, Samaniego risked
7 his life. On information and belief, Defendant Sullivan ignored the target
8 Harris placed on Samaniego’s back and the clear danger to his personal,
9 physical well-being, by condoning, encouraging, fostering and/or ratifying
10 the unlawful conduct of said Defendants, specifically including the named
11 Correctional Officer defendants involved in Incident Nos. 1 through 5....

12 (*Id.* at 18-19, ¶ 48, emphasis omitted.) Samaniego maintains “it is reasonably foreseeable that Sullivan
13 knew or should have known that such a brutal retaliatory attack(s) against Samaniego would occur.”
14 (*Id.* at 24, ¶ 60.) Further, Samaniego believes Sullivan ratified the conduct of the defendants
15 employed at CCI. (*Id.* at 19, ¶ 48.)

16 On July 19, 2019, Samaniego was transferred to Kern Valley State Prison. (Doc. 32 at 16, ¶ 43.)
17 However, Samaniego contends he continues to suffer “retaliatory behavior” from officers at KVSP.
18 (*Id.* at 7, ¶ 30; *see also id.* at 20, ¶ 49.) Samaniego alleges the warden of KVSP, defendant Pfeiffer,
19 “had, or should have in his capacity as KVSP warden, actual knowledge of Samaniego’s personal file
20 and identification of Samaniego as a ‘target’ upon [his] transfer from CCI to KVSP in July 2019.” (*Id.*
21 at 20, ¶ 49.) According to Samaniego:

22 Pfeiffer’s awareness of Samaniego’s personal file upon transfer to KVSP,
23 including the severe beating that Samaniego sustained at CCI on May 24,
24 2019, provided sufficient notice to Pfeiffer of who, what and why
25 Samaniego had become – and remained: a target of the corrupt, criminal
26 CDCR Correctional Officers who run the daily CDCR activities, including
27 those employed at KVSP. Also, on information and belief, Pfeiffer knew
28 of the ongoing, widespread, constant beatings and use of excessive force
by these corrupt Correctional Officers, who ruled the cell blocks and yards
with intimidation, threats, and with brutal and violent attacks against
defenseless inmates.

29 (*Id.* at 20-21, ¶ 50.) Samaniego reports he filed at least eight 602 complaints against KVSP officers for
30 “physical intimidation, denial of medical care, theft of personal property and intentional placement... in
31 non-segregated housing, purposefully placing his life in danger.” (*Id.* at 21, ¶ 50.) He believes KVSP
32 also officers “enlisted assistance of STG inmates to intimidate and harm [him].” (*Id.*) According to
33 Samaniego, “instead of taking proper steps to discipline KVPS Correctional Officers,” Pfeiffer
34 condoned, encouraged, fostered and/or ratified “the unlawful conduct of said Defendants.” (*Id.*, ¶ 51.)

1 Samaniego seeks to hold both wardens Sullivan and Pfeiffer liable “for [their] own culpable
 2 action or inaction in the training, supervision or control of his subordinates, or for his acquiescence in
 3 the constitutional deprivations which [the] Third Amended Complaint allege, or for the conduct that
 4 showed a reckless or callous indifference to the rights of others, including Samaniego.” (Doc. 32 at 19,
 5 ¶48; *see also id.* at 21, ¶ 51.)

6 On May 24, 2021, Samaniego initiated this action by filing a complaint for violations of his
 7 civil rights (Doc. 1), which he amended on November 29, 2021 (Doc. 12). Defendants Sullivan and
 8 Pfeiffer moved to dismiss the claims against them, and the motion was granted. (Docs. 14, 22.) To
 9 the extent the claims were raised against the wardens in their official capacity, the Court dismissed the
 10 claims without leave to amend. (*Id.* at 9.) However, the Court granted leave to amend to the extent
 11 the claims were raised against the wardens in their individual capacities. (*Id.* at 8.) Defendants also
 12 challenged the sufficiency of the allegations in the Second Amended Complaint, and the Court granted
 13 the motion to dismiss. (Docs. 26, 31.) In granting leave to amend, the Court informed Samaniego that
 14 he would be given “one final opportunity to allege facts sufficient to support his claims against
 15 Sullivan and Pfeiffer.” (Doc. 31 at 21, emphasis omitted.)

16 Samaniego filed his Third Amended Complaint on August 8, 2022. (Doc. 33.) Defendants
 17 Sullivan, Pfeiffer, and Beardsley filed the motion to dismiss all claims against them on August 8, 2022.
 18 (Doc. 33.) Samaniego filed his opposition to the motion on August 22, 2022 (Doc. 36), to which the
 19 defendants replied on August 31, 2022 (Doc. 37).

20 **II. Legal Standards for a Motion to Dismiss**

21 A Rule 12(b)(6) motion “tests the legal sufficiency of a claim.” *Navarro v. Block*, 250 F.3d
 22 729, 732 (9th Cir. 2001). Dismissal of a claim under Rule 12(b)(6) is appropriate when “the complaint
 23 lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v.*
 24 *Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). Thus, under Rule 12(b)(6), “review
 25 is limited to the complaint alone.” *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993).

26 The Supreme Court held: “To survive a motion to dismiss, a complaint must contain sufficient
 27 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
 28 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The

1 Supreme Court explained,

2 A claim has facial plausibility when the plaintiff pleads factual content
3 that allows the court to draw the reasonable inference that the defendant is
4 liable for the misconduct alleged. The plausibility standard is not akin to a
5 “probability requirement,” but it asks for more than a sheer possibility that
6 a defendant has acted unlawfully. Where a complaint pleads facts that are
7 “merely consistent with” a defendant’s liability, it “stops short of the line
8 between possibility and plausibility of ‘entitlement to relief.’”

9 *Iqbal*, 556 U.S. at 678 (internal citations omitted). Allegations of a complaint must be accepted as true
10 when the Court considers a motion to dismiss. *Hospital Bldg. Co. v. Rex Hospital Trustees*, 425 U.S.
11 738, 740 (1976). A court must construe the pleading in the light most favorable to the plaintiff, and
12 resolve all doubts in favor of the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). However,
13 legal conclusions need not be taken as true when “cast in the form of factual allegations.” *Ileto v.*
14 *Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003).

15 “The issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled
16 to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a
17 recovery is very remote and unlikely but that is not the test.” *Scheuer v. Rhodes*, 416 U.S. 232, 236
18 (1974). The Court “will dismiss any claim that, even when construed in the light most favorable to
19 plaintiff, fails to plead sufficiently all required elements of a cause of action.” *Student Loan Marketing
Assoc. v. Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998). To the extent pleading deficiencies can be
20 cured by the plaintiff alleging additional facts, leave to amend should be granted. *Cook, Perkiss &
Liehe, Inc. v. Northern Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

21 **III. Section 1983 Claims**

22 An individual may bring an action for the deprivation of civil rights pursuant to 42 U.S.C. §
23 1983 (“Section 1983”), which “is a method for vindicating federal rights elsewhere conferred.” *Albright
v. Oliver*, 510 U.S. 266, 271 (1994). In relevant part, Section 1983 provides:

24 Every person who, under color of any statute, ordinance, regulation,
25 custom, or usage, of any State or Territory... subjects, or causes to be
26 subjected, any citizen of the United States or other person within the
27 jurisdiction thereof to the deprivation of any rights, privileges, or
immunities secured by the Constitution and laws, shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding
for redress...

28 42 U.S.C. § 1983. To state a cognizable claim under Section 1983, a plaintiff must allege (1) the

1 deprivation of a constitutional right and (2) a person who committed the alleged violation acted under
2 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Williams v. Gorton*, 529 F.2d 668, 670 (9th
3 Cir. 1976).

4 A plaintiff must allege a specific injury was suffered and show causal relationship between the
5 defendants' conduct and the injury suffered. *See Rizzo v. Goode*, 423 U.S. 362, 371-72 (1976). Thus,
6 Section 1983 "requires that there be an actual connection or link between the actions of the defendants
7 and the deprivation alleged to have been suffered by the plaintiff." *Chavira v. Ruth*, 2012 WL
8 1328636, at *2 (E.D. Cal. Apr. 17, 2012). A person deprives another of a constitutional right "if he
9 does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he
10 is legally required to do so that it causes the deprivation of which complaint is made." *Johnson v.*
11 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

12 **IV. Discussion and Analysis**

13 Defendants seek dismissal of the claims against Beardsley, Sullivan, and Pfeiffer, asserting the
14 facts alleged are insufficient to state a cognizable claim against these defendants. (Doc. 33 at 1.) In
15 addition, Defendants contend "Sullivan and Pfeiffer are entitled to qualified immunity for any claims
16 asserted against them." (*Id.*) Samaniego maintains dismissal is not appropriate, and his allegations—as
17 stated in the TAC and opposition—are sufficient to support his claims. (*See* Doc. 36 at 5-12.)

18 **A. Liability of Officer Beardsley**

19 Samaniego names Officer Beardsley as a defendant in the caption of the TAC and alleges
20 Beardsley "is an individual and believed to be a resident of the County of Kern, California during all
21 times relevant hereto." (Doc. 32 at 3-4, ¶ 11.) However, there are no other allegations in the TAC
22 related to Beardsley. (*See generally* Doc. 32.) Thus, Defendants contend Beardsley should be
23 dismissed as a defendant. (Doc. 33 at 10.)

24 Under Section 1983, a plaintiff must allege that each defendant personally participated in the
25 deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). The facts alleged must
26 be sufficient for the Court to conclude that each defendant, through his own individual actions, violated
27 Samaniego's constitutional rights. *Iqbal*, 556 U.S. at 1948-49. Samaniego acknowledges that he failed
28 to identify any actions taken by Beardsley in the TAC. (Doc. 36 at 12.) Opposing dismissal,

1 Samaniego asserts:

2 Beardsley was employed and positioned as a tower guard at the CCI
3 facility and was a witness to the maneuverings of the defendant
4 correctional officers who participated in the physical beating of Samaniego
5 on May 24, 2019, and similar to the other named correctional officers,
failed to intervene or otherwise come forward to stop the constitutional
violations committed against Plaintiff, or to report such illegal conduct
witnessed to his superiors on Plaintiff's behalf.

6 (Doc. 36 at 12.) According to Samaniego, the omission in the body of the TAC of these allegations
7 "was inadvertent." (*Id.*)

8 Significantly, the Court may not look to the allegations regarding Beardsley raised by
9 Samaniego in his opposition to determine the viability of the claims. *See Schneider v. Cal. Dep't of*
10 *Corrections*, 151 F.3d 1194, 1197 n. 1 (9th Cir.1998) (finding "new allegations" raised in an opposition
11 to a motion to dismiss were "irrelevant for Rule 12(b)(6) purposes," because "[i]n determining the
12 propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a plaintiff's
13 moving papers, such as a memorandum in opposition to a defendant's motion to dismiss") (emphasis in
14 original); *see also Campos v. Fresno Deputy Sheriff's Assoc.* 441 F. Supp. 3d 945, 959 (E.D. Cal. 2020)
15 ("A court may not look beyond the complaint to a plaintiff's memorandum in opposition to a
16 defendant's motion to dismiss."). Thus, the Court declines to cure the admitted pleading deficiency
17 based solely upon allegations in the opposition, and Defendants' motion to dismiss Beardsley as a
18 defendant is **GRANTED**, with leave to amend.²

19 **B. Liability of the Wardens**

20 Liability may not be imposed on supervisory personnel under Section 1983 based on the theory
21 of *respondeat superior*, as each defendant is only liable for his or her own misconduct. *Iqbal*, 556
22 U.S. at 1948-49; *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009). When a defendant
23 holds a supervisory position—such as Wardens Sullivan and Pfeiffer—the causal link between such
24 defendant and the claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*,

25 _____
26 ² This Court previously observed that "[f]acts raised for the first time in opposition papers should be considered ... in
determining whether to grant leave to amend or to dismiss the complaint with or without prejudice." *Campos*, 441 F.
27 Supp. 3d at 959 (citing *Broam v. Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003).) Based upon the allegations presented in
28 the opposition, the Court finds leave to amend is appropriate for Samaniego to incorporate the allegations into his
complaint and clarify the claim(s) for which he seeks to impose liability against Beardsley.

1 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978).

2 Samaniego must allege facts sufficient to determine that Sullivan and Pfeiffer “participated in
 3 or directed the violations, or knew of the violations and failed to act to prevent them.” *See Taylor v.*
 4 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *accord Starr v. Baca*, 633 F.3d 1191, 1209 (9th Cir. 2011);
 5 *see also Anderson v. Hansen*, 2013 WL 4676212 at *3 (E.D. Cal. Aug. 30, 2013) (“[a] prison official
 6 may be held liable for failing to protect an inmate from a prison guard if he knew of an excessive risk
 7 to inmate health or safety posed by the … prison guard and disregarded that risk”). Claims that “rely
 8 upon claims of the general responsibility of the warden for prison operations that are insufficient to
 9 establish Section 1983 liability.” *Brown v. Perez*, 2016 WL 7975264 at *6 (C.D. Cal. Dec. 16, 2016).

10 1. Addressing individual capacity at the pleading stage

11 Samaniego maintains that “at the pleading stage,” he “is not required to identify the specific
 12 superficial ‘individual capacity’ of either defendant warden.” (Doc. 26 at 4.) According to
 13 Samaniego, capacity “is a question of fact requiring discovery, and is, thus, an inappropriate basis for
 14 dismissal at the pleading stage.” (*Id.*, citing *Gurrola v. Jervis*, 2009 U.S. Dist. LEXIS 133234 at *24,
 15 2009 WL 9548218 (C.D. Cal. April 2, 2009).) Samaniego contends in *Gurrola*, the court indicated the
 16 “capacity in which the employee or agent is acting in a such a role is a question of fact to be addressed
 17 at the summary judgment stage.” *Id.*

18 As the Court previously explained—when addressing same argument related to the SAC—the
 19 Central District did not address a claim arising under Section 1983 in *Gurrola*. Rather, the court
 20 addressed the doctrine of *respondeat superior* under California Law, including the Fair Housing Act,
 21 the Unruh Civil Rights Act, and Fair Employment and Housing Act. *Gurrola*, 2009 WL 9548218 at
 22 *6, *9-10 (observing “[t]here is no question that principles of *respondeat superior* apply in the Fair
 23 Housing Act context;” “[r]espondeat superior does appear to be an applicable liability theory, at least
 24 with respect to Plaintiffs’ Unruh Civil Rights Act claim;” and the doctrine was “plainly applicable in
 25 the FEHA context”). The court then indicated that whether an individual acted within the scope of his
 26 employment for purposes of invoking liability under the doctrine of *respondeat superior* appeared “to
 27 be a fact question better left for the summary judgment stage []at which time the parties can also
 28 address whether the traditional ‘scope of employment’ analysis applies.” *Id.* at *10.

1 In contrast to the laws addressed in *Gurrola*, the doctrine of *respondeat superior* does not apply
 2 under Section 1983. *Iqbal*, 556 U.S. at 676 (“Government officials may not be held liable for the
 3 unconstitutional conduct of their subordinates under a theory of *respondeat superior*”); *see also Snow*
 4 *v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012) (“Under Section 1983, supervisory officials are not
 5 liable for actions of subordinates on any theory of vicarious liability”); *Jesus Christ Prison Ministry v.*
 6 *Cal. Dep’t of Corr.*, 456 F.Supp.2d 1188, 1196 (E.D. Cal. 2006) (“Supervisory personnel … are not
 7 liable under § 1983 for the actions of their employees under a theory of *respondeat superior*”).
 8 Because the doctrine of *respondeat superior* is inapplicable under Section 1983, Samaniego is unable
 9 to hold Wardens Sullivan and Pfeiffer liable for the actions of correctional officers at the prisons by
 10 invoking the doctrine. As a result, his continued reliance upon *Gurrola* is misplaced.

11 Moreover, contrary to Samaniego’s assertion, courts may clearly address the capacity of
 12 defendants “at the pleading stage” when evaluating a claim under Section 1983 and determine whether
 13 the pleadings are sufficient to invoke liability for supervisory officials. *See, e.g., Lee v. City of Los*
 14 *Angeles*, 250 F.3d 668, 697 n.6 (9th Cir. 2001) (“when plaintiffs sue public officials in their individual
 15 capacity under § 1983, [] to survive a Rule 12(b)(6) motion to dismiss, plaintiffs must state in their
 16 complaint nonconclusory allegations…” [citation omitted]); *Parker v. Landry*, 935 F.3d 9, 14-19 (1st
 17 Cir. 2019) (addressing whether the allegations at the pleading stage were sufficient to invoke liability
 18 upon the supervisory personnel, in their individual capacities, and finding the district court properly
 19 denied a motion to amend the complaint as futile); *Lex v. Wexford Health Source*, 2016 WL 302151, at
 20 *2 (N.D. Ill. Jan. 25, 2016) (“Section 1983 claims for monetary damages against state officials in their
 21 official capacity cannot survive the pleading stage because those state officials are not ‘persons’ for
 22 purposes of allowing suit under Section 1983”).

23 2. Claim against Sullivan

24 Samaniego reports his “claims against Defendant Sullivan are based on his knowledge of the
 25 CDCR guidelines; and maintaining and permitting the practices, policies and customs under those
 26 guidelines and CDCR procedures for correctional facilities.” (Doc. 32 at 18, ¶ 47.) He asserts that
 27 “because part of Sullivan’s job duties as the CCI Warden was to review [602] claim forms for possible
 28 disciplinary actions that may be brought against CCI personnel …, Sullivan knew about Harris’

1 involvement in the Nino beating, that Harris was ‘written up’ (via 602 claim) Samaniego for this
2 assault on Nino, and that Harris had numerous similar complaints filed against him for beatings and
3 excessive force against other CCI inmates (including Andrew Hebert, CDCR #BC8228).” (*Id.*, ¶ 48.)
4 In addition, he contends Sullivan knew that reporting Harris “would undoubtedly ‘put a target’ on
5 Samaniego’s back.” (*Id.* at 19, ¶ 48.) According to Samaniego: “On information and belief, Defendant
6 Sullivan ignored the target Harris placed on Samaniego’s back and the clear danger to his personal,
7 physical well-being, by condoning, encouraging, fostering and/or ratifying the unlawful conduct of said
8 Defendants, specifically including the named Correctional Officer defendants involved in Incident Nos.
9 1 through 5.” (*Id.*) Further, Samaniego alleges Sullivan ratified the conduct of the defendants. (*Id.*)

10 Defendants contend these allegations in the TAC remain insufficient to invoke the individual
11 liability of Sullivan. (Doc. 33 at 6.) Defendants observe: “[t]he TAC does not allege that Defendants
12 Sullivan and Pfeiffer knew in advance of the alleged attack on Plaintiff, or that they were involved in
13 it.” (*Id.*) According to Defendants, Samaniego “affirmative acknowledges” that Sullivan “did not
14 have such prior knowledge or involvement” and instead Samaniego based the knowledge of Sullivan
15 upon his responsibility of “being in charge of the prison and its staff, and with knowledge of the other
16 inmate’s prior beating for which Plaintiff made a witness statement.” (*Id.*, citing TAC ¶¶ 47-49.)
17 Defendants argue “These allegations are essentially the same as those in the prior second amended
18 complaint, which the Court found insufficient in granting Defendants’ prior motion to dismiss.” (*Id.*)
19 Defendants acknowledge Samaniego has now identified Harris as the officer involved in the attack on
20 Nino but contend “the SAC had alleged the same ‘target’ allegations, just without identifying the
21 person who allegedly beat the other inmate as being Harris.” (*Id.*) Because the Court previously
22 found “the alleged target scenario... was insufficient to state a claim,” Defendants contend the
23 allegations continue to be insufficient. (*Id.*)

24 Samaniego contends he “sufficiently alleged Sullivan’s culpability, and directs the Court’s
25 attention to paragraphs 47 and 48 in the TAC. (Doc. 36 at 7.) He asserts the allegations in the TAC
26 support a conclusion that Sullivan exhibited “deliberate indifference towards Samaniego’s safety and
27 well-being.” (*Id.*) According to Samaniego, his “allegations demonstrate that the requisite causal
28 connection was established by setting in motion a series of acts by or by Sullivan’s knowingly refusing

1 to terminate a series of acts by others, which the supervisor knew or reasonably should have known
 2 would cause others to inflict a constitutional injury.” (*Id.*, citing *See Starr v. Baca*, 652 F.3d 1202,
 3 1207-08 (9th Cir. 2011) (modifications adopted, emphasis omitted). Samaniego maintains that he
 4 “[n]aturally … does not plead ‘advance knowledge’ by the wardens” because “[t]hat is what discovery
 5 is for.” (*Id.*)

6 Significantly, Samaniego’s contention that he is not required to plead knowledge at this juncture
 7 is directly contrary to established pleading standards. As explained by the Ninth Circuit, “Even under a
 8 ‘deliberate indifference’ theory of individual liability, [a plaintiff] must still allege sufficient facts to
 9 plausibly establish the defendant’s ‘knowledge of’ and ‘acquiescence in’ the unconstitutional conduct
 10 of his subordinates.” *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (citing *Starr*, 652 F.3d at
 11 1206-07); *see also Chavez v. United States*, 683 F.3d 1102, 1111 (9th Cir. 2012) (finding “no factual
 12 basis for imputing any such knowledge” of constitutional violations to supervisors “by virtue of [their]
 13 responsibilities”); *Martinez v. Sherman*, 2022 WL 126054, at *4 (E.D. Cal. Jan. 12, 2022) (finding
 14 allegations were insufficient to state a claim against a warden where the complaint was “devoid of any
 15 factual allegations that would demonstrate… knowledge,” as required for deliberate indifference).
 16 Thus, to hold Sullivan liable under a deliberate indifference theory, Samaniego is required to allege
 17 Sullivan had knowledge of and acquiesced to the conduct of his subordinate officers. *See Hydrick*, 669
 18 F.3d at 942; *Starr*, 652 F.3d at 1206-1207.

19 For example, the Ninth Circuit determined in *Starr* that a plaintiff stated a cognizable claim
 20 against a supervisor where he alleged that the sheriff knew of — and was specifically given official
 21 notice of — culpable uses of force by subordinates prior to the alleged use of excessive force against
 22 the plaintiff and took no preventative action. *Starr*, 652 F.3d at 1208-1209. The Court observed there
 23 were “many allegations in the complaint detailing what Sheriff Baca knew or should have known, and
 24 what Sheriff Baca did or failed to do.” *Id.* at 1209. Starr alleged Baca signed a Memorandum of
 25 Understanding in 1999, which required him “to address and correct the continuous constitutional
 26 violations to which inmates were being subjected.” *Id.* Starr also detailed numerous instances of
 27 injuries to other named inmates that occurred after Baca signed the Memorandum of Understanding.
 28 *Id.* at 1209-1212. The Court noted Barr also received notice of all incidents, and Starr alleged “Baca

1 did not take action to protect inmates under his care despite the dangers, created by the actions of his
 2 subordinates, of which he had been made aware.” *Id.* at 1216. The Court concluded the allegations
 3 “plausibly suggest that Sheriff Baca acquiesced in the unconstitutional conduct of his subordinates, and
 4 was thereby deliberately indifferent to the danger posed to Starr.” *Id.* at 1216. Thus, the Court
 5 concluded Starr “sufficiently alleged under Rule 8(a) a supervisory liability claim of deliberate
 6 indifference against Sheriff Baca.” *Id.* at 1217.

7 On the other hand, a general assertion that a supervisor knew of “systemic excessive force” by
 8 officers fails to support a claim. For example, the Central District determined a plaintiff failed to state
 9 a claim against three associate wardens when the plaintiff asserted the wardens “knew of the ‘systemic
 10 acts of excessive force on inmates’ by the Green Wall prison officials and condoned them.” *Windham*
 11 *v. Franklin*, 2014 WL 7740262, at *14 (C.D. Cal. Aug. 29, 2014). The court explained, “Plaintiff’s
 12 allegations that [the associate wardens] knew that prison officials used excessive force against inmates
 13 are too conclusory to constitute a basis for holding them personally liable for the force used against
 14 Plaintiff.” *Id.*

15 Similarly, the Southern District found in *Johnson v. Paramo* that the plaintiff failed to state a
 16 claim against a warden where the facts alleged did not allege facts sufficient to support a conclusion
 17 that the warden knew of a risk of harm to the plaintiff. *Id.*, 2018 WL 571957 (S.D. Cal. Jan. 26, 2018).
 18 Jackson asserted that “Paramo should have known that [he] would be injured or attacked if required to
 19 [housing in] Facility C because Warden Paramo knew about the inappropriate behavior of Defendants
 20 … from Plaintiff’s interview about the behavior, completed 602 appeal forms, and complaints lodged
 21 with the Internal Affairs Office.” *Id.* at *8. However, the court observed: “the fact that Plaintiff filed
 22 complaints does not establish that (1) Defendant Paramo read the complaints, (2) the information in the
 23 complaints was an accurate account of what occurred, or (3) Defendant Paramo knew that housing
 24 Plaintiff in Facility C would create an excessive risk to Plaintiff’s health or safety.” *Id.* The court
 25 explained that even if the warden “suspected that there was a possibility of a problem occurring if
 26 Plaintiff was housed in Facility C, theoretical risk of harm is insufficient to establish deliberate
 27 indifference.” *Id.* (citing *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987); *Berg v. Kincheloe*, 794 F.2d
 28 457, 459 (9th Cir. 1986)). Furthermore, although Jackson argued “Paramo is liable for his ‘own

1 culpable action or inaction in the training, supervision, or control of his subordinates, for his
 2 acquiescence in the constitutional deprivation,” the court found Jackson failed to identify “any specific
 3 training or supervision by Defendant Paramo that indicated an acquiescence in the alleged
 4 constitutional deprivation.” *Id.* As a result, the court finds the allegations were insufficient to establish
 5 any causal link between Paramo and any alleged constitutional violation and dismissed the claim. *Id.* at
 6 *9, *adopted by* 2018 WL 1531927, at *1 (S.D. Cal. Mar. 28, 2018).

7 Significantly, as Defendants argue, Samaniego has not added any allegations in the TAC that
 8 support a conclusion Sullivan knew of a risk to Sullivan and disregarded the risk. Once again,
 9 Samaniego alleges Sullivan knew of “rogue, corrupt Correctional Officers at CCI” and that officers
 10 “inflicted emotional trauma and sometime severe physical beatings against CCI inmates in hopes of
 11 ‘silencing’ them as witnesses to reveal or expose the criminal activities of the very guards who are
 12 sworn to uphold the law and maintain order and protect them in the prison system.” (Doc. 32 at 19, ¶
 13 48.) However, Samaniego does not allege facts—beyond conclusions he makes due to Sullivan’s job
 14 duty to review 602 forms—that show Sullivan knew of a risk to *Samaniego*. As in *Jackson*, the fact
 15 that Samaniego submitted a 602 implicating wrongful conduct by Harris against another prisoner does
 16 not establish that Sullivan read the 602 or knew Harris would target Samaniego months later. *See id.*,
 17 2018 WL 571957, at *8. For example, Samaniego does not identify other specific incidents in which a
 18 prisoner submitted a 602 claim and suffered retaliatory actions by Harris or the other named
 19 defendants as a result, such that Sullivan would be aware of a pending threat to Samaniego.³ *Compare*
 20 *with Starr*, 652 F.3d at 1208-1209. Indeed, deliberate indifference requires showing of “more than a
 21 mere suspicion that an attack will occur.” *Berg*, 794 F.2d at 459; *see also Gaut*, 810 F.2d at 925
 22 (“mere threat” of possible harm does not violate the Eighth Amendment). Further, Samaniego does
 23 not allege facts supporting his conclusion that Sullivan ratified the conduct of the subordinate officers.
 24 Without such allegations, Samaniego again fails to support his conclusion that the CCI warden was
 25 aware of a risk of retaliatory actions, including excessive force, for Samaniego self-identifying as a
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³ Samaniego alleges that other inmates filed excessive force complaints against Harris, including Andrew Hebert, CDCR #BC8228. (Doc. 32, ¶ 48.) However, there are no facts alleged related to the other complaints—including that of Herbert—such as the alleged excessive force being in retaliation for complaints against Harris or other officers.

1 witness in Nino's alleged attack. *See Windham*, 2014 WL 7740262, at *14.

2 c. Claim against Pfeiffer

3 Samaniego reports his "claims against Defendant Pfeiffer are based on his maintaining and
 4 permitting the practices, policies and customs under CDCR guidelines and procedures for correctional
 5 facilities." (Doc. 32 at 20, ¶ 49.) Samaniego acknowledges that "Pfeiffer was not responsible for [the]
 6 May 24, 2019 beating at CCI." (*Id.*) However, Samaniego alleges Pfeiffer "had, or should have in his
 7 capacity as KVSP warden, actual knowledge of Samaniego's personal file and identification of
 8 Samaniego as a 'target' upon Samaniego's transfer from CCI to KVSP in July 2019." (*Id.*) He reports
 9 he filed at least eight 602 complaints against KVSP officers for "physical intimidation, denial of
 10 medical care, theft of personal property and intentional placement ... in non-segregated housing,
 11 purposefully placing his life in danger." (*Id.* at 21, ¶ 50.) Samaniego also believes KVSP officers
 12 "enlisted assistance of STG inmates to intimidate and harm [him]." (*Id.*) According to Samaniego,
 13 "instead of taking proper steps to discipline KVPS Correctional Officers," Pfeiffer condoned,
 14 encouraged, fostered and/or ratified "the unlawful conduct of said Defendants." (*Id.*, ¶ 51.)

15 Importantly, as Samaniego acknowledges, all other defendants in this action were employed at
 16 CCI, not KVSP, and were not under the supervision of Warden Pfeiffer. Thus, it strains credulity that
 17 "Pfeiffer has continued to condone, encourage, foster and/or ratify the conduct of *[the] Defendants*."
 18 (Doc. 32 at 21, ¶ 51 (emphasis added).) Furthermore, there are no facts alleged to support this
 19 assertion. To the extent Samaniego contends Pfeiffer knew of a risk to Samaniego and disregarded it,
 20 resulting in violations of his civil rights at KSVP, the Court is also unable to find the allegations in the
 21 TAC support such a conclusion. For example, there are no allegations that the correctional officers at
 22 KSVP who committed the acts complained of knew that Samaniego was identified as a witness in a 602
 23 claim submitted at CCI. Without such knowledge, the acts could not be "retaliatory," and supervisor
 24 liability cannot be imposed upon Pfeiffer for a violation of the First Amendment. *See Windham*, 2014
 25 WL 7740262, at *14 ("allegations that [the associate wardens] knew that prison officials used excessive
 26 force against inmates are too conclusory to constitute a basis for holding them personally liable for the
 27 force used against Plaintiff"); *Flynn v. City of Santa Clara*, 388 F.Supp.3d at 1164-65 (N.D. Cal. 2019)
 28 (dismissing claims where there were no allegations officers were aware of the plaintiff's protected First

1 Amendment activity); *Hammler v. Alvarez*, 2019 WL 422575, at *9 (S.D. Cal. Feb. 4, 2019) (“Because
2 Plaintiff alleges no facts to show that [defendant] had any prior knowledge of this grievance, there are
3 no facts to suggest that [the officer] issued the RVR *in retaliation...*”)(emphasis added).

4 **3. Qualified immunity**

5 Defendants contend, “If for any reason the Court determines that Plaintiff has stated a
6 cognizable claim against Defendants Pfeiffer or Sullivan, they are entitled to qualified immunity.”
7 (Doc. 33 at 7.) Because the Court finds Samaniego did not allege facts sufficient to impose supervisor
8 liability, as set forth above, the Court declines to address the matter of qualified immunity.

9 **V. Leave to Amend**

10 Samaniego requests leave to amend if dismissal is granted. (Doc. 36 at 12.) Pursuant to Rule
11 15 of the Federal Rules of Civil Procedure, leave to amend “shall be freely given when justice so
12 requires,” bearing in mind “the underlying purpose of Rule 15 to facilitate decisions on the merits,
13 rather than on the pleadings or technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)
14 (alterations, internal quotation marks omitted). When dismissing a claim, “a district court should grant
15 leave to amend ... unless it determines that the pleading could not possibly be cured by the allegation
16 of other facts.” *Id.* at 1130 (internal quotation marks omitted). Generally, leave to amend shall be
17 denied only if amendment would unduly prejudice the opposing party, cause undue delay, or be futile,
18 or if the moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publishing*, 512 F.3d 522,
19 532 (9th Cir. 2008).

20 Given the lack of allegations in the TAC related to Officer Beardsley, the Court is unable to
21 determine whether amendment would be futile. Therefore, leave to amend the claims against Officer
22 Beardsley is appropriate, because it would allow Samaniego to clarify the actions attributed to the
23 officer and the basis for his claims.

24 On the other hand, Samaniego was previously granted leave to amend the claims against
25 Sullivan and Pfeiffer. (*See* Doc. 22 at 9; Doc. 31 at 21.) Samaniego has again failed to allege facts
26 sufficient to cure the pleading deficiencies identified by the Court. As a result, further leave to amend
27 the claims against Sullivan and Pfeiffer is futile. *See, e.g., Zucco Partners, LLC v. Digimarc Corp.*, 552
28 F.3d 981, 1008 (9th Cir. 2009) (“repeated failure to cure deficiencies” constitutes “a strong indication

1 that the [plaintiff] has no additional facts to plead" and "that any attempt to amend would be futile").
2 Accordingly, the request for leave to amend the claims against Sullivan and Pfeiffer is denied.

3 **VI. Conclusion and Order**

4 Based upon the foregoing, the Court **ORDERS**:

- 5 1. Defendants' motion to dismiss (Doc. 33) is **GRANTED**.
- 6 2. Officer Beardsley is **DISMISSED** as a defendant, with leave to amend.
- 7 3. The claims against Wardens Sullivan and Pfeiffer are **DISMISSED** without leave to
8 amend.
- 9 4. The Clerk of Court is directed to update the docket and terminate W.J. Sullivan and
10 Christian Pfeiffer as defendants in this action.
- 11 5. Plaintiff **SHALL** file any Fourth Amended Complaint within 45 days of the date of
12 service of this order.

13 **Failure to file the amended complaint as ordered will result in Officer Beardsley being**
14 **terminated as a defendant in this action.**

15
16 IT IS SO ORDERED.

17 Dated: February 27, 2023


UNITED STATES DISTRICT JUDGE

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